THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No. 23371 of 2005

Date: 13.10.2006

Between:

Golla Lokaradya
S/o late Golla Ramachandra Naidu
Asged 54 years, Occ. Assistant Commercial Tax Officer
R/o H.No.6-78, Vijayalakshmi Colony
Santhapet
CHITTOOR-517001

… Petitioner

And:

The State of Andhra Pradesh, rep. By
Its Principal Secretary,
Department of Tribal Welfare
A.P.Secretariat,
Hyderabad & others

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No. 23371 of 2005

ORDER:

This writ petition is filed questioning the order dated 05.12.2004 passed by the 2nd respondent - Collector and District Magistrate, Chittoor, canceling the caste certificate of the petitioner as confirmed by the first respondent by order dated 8.10.2005.

The facts in brief are as follows: The petitioner was issued a caste certificate dated 21.8.1974 by the Tahsildar, Chittoor certifying that he belongs to 'Yerukula' caste, which is a Scheduled Tribe. In the Secondary School Leaving Certificate of the petitioner dated 13.04.1967 as well as in the transfer certificate dated 21.06.1974 issued by Hindu College, Machilipatnam, his caste was shown as 'Yerukula'. On the basis of the same, the petitioner was appointed as L.D.C. on 18.11.1976 against the Scheduled Tribe quota in the office of District Collector, Chittoor. After putting in seven years of service, he was promoted to the post of Assistant Commercial Tax officer on 23.01.1983.

While so, the petitioner was served with a Notice dated 24.06.1998 issued by the Revenue Divisional Officer, Chittoor calling upon him to produce his original caste certificate for the purpose of verification of his social status. Accordingly, the petitioner appeared before the Revenue Divisional Officer, Chittoor and produced the caste certificate. Similar notices dated 13.05.1999 and 30.04.2002 were issued by the Revenue Divisional Officer, Chittoor informing the petitioner to produce the relevant records together with the details of the genealogical tree for three generations in proof of the caste

claimed by him. In response to all the notices, the petitioner appeared before the Revenue Divisional Officer and submitted the information required along with the relevant documents.

Though the petitioner was not informed of the result of the said verification, a fresh notice in Form-VI dated 9.5.2004 was served on the petitioner stating that a complaint was received alleging that he had obtained Scheduled Tribe community certificate fraudulently and therefore, he should attend the enquiry on 17-5-2004 regarding his community claimed at the office of the Joint Collector, Chittoor and furnish all the documentary evidence in support of his community, failing which, the District Level Scrutiny Committee will finalize its recommendations based on the material made available to the Committee by the Competent Authority. In compliance with the same, the petitioner appeared before the Joint Collector and again produced all the material evidence along with the explanation. It appears that the District Level Scrutiny Committee, headed by the Joint Collector, constituted under The Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community of Certificates Act 16 of 1993 (for short, 'the Act 16 of 1993'), opined that the petitioner belongs to 'Ekin' community but not 'Yerukula' Scheduled Tribe community as claimed by him. Having accepted the said finding recorded by the District Level Scrutiny Committee, the District Collector in exercise of the powers conferred under Section 5(1) of the Act 16 of 1993 cancelled the caste certificate dated 21.8.1974 issued in favour of the petitioner. Questioning the same, though the petitioner preferred the statutory appeal, the same was dismissed by the first respondent on 8.10.2005. Hence, this writ petition.

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Social Welfare appearing for the respondents.

The impugned order of cancellation passed by the 2nd respondent as confirmed by the 1st respondent is questioned primarily

on the ground that the same was passed without affording an opportunity to the petitioner to make his representation as mandated under sub-section (1) of Section 5 of the Act 16 of 1993. It is also contended that none of the documents, including the report of DLSC which formed basis for the order of cancellation were furnished to the petitioner and therefore the impugned order is also violative of the fundamental principles of natural justice.

The learned Counsel for the petitioner contended that even on merits, the impugned order is illegal and liable to be set aside, since the findings recorded by the District Level Scrutiny Committee are not based on proper appreciation of the material on record. Learned counsel pointed out that the father of the petitioner by name G. Ramachandranaidu, had completed his S.S.L.C. in the year 1941 and in his Secondary School Leaving Certificate dated 10.10.1941, his caste was shown as 'Yerukula'. Even in the Register of Admission in the Besant Theosophical College, Madanapalle, in which the father of the petitioner had studied, his caste was shown as 'Yerukula'. The Sub Collector, Madanapalle issued a certificate dated 18.07.1947 certifying that the father of the petitioner belonged to 'Yerukula' community. The father of the petitioner was appointed in A.P. State Judicial Service under the category of Scheduled Tribe. While he was in service, an enquiry was ordered by the High Court of Andhra Pradesh as to his social status and after due enquiry, the District and Sessions Judge, who was the Enquiry officer, concluded that the petitioner's father belonged to 'Yerukula community'. The learned counsel for the petitioner contended that there is absolutely no justifiable reason to nullify the said findings which became final long back and the impugned order was passed without properly appreciating the relevant factors.

In the counter-affidavit filed on behalf of the respondents, it is stated that the District Level Scrutiny Committee during the verification of the records observed that the then Collector, Chittoor after

conducting confidential enquiry through the Revenue Divisional Officer, Chittoor, over the social status of the family members of the paternal grand father of the petitioner, addressed a letter to the Director of Tribal Welfare, Andhra Pradesh, Hyderabad that the family of the petitioner's grand father belongs to 'Ekin' community, but not 'Yerukula'. On the basis of the said report, the District Level Scrutiny Committee submitted its findings to the District Collector. In turn, the District Collector accepting the said findings had rightly passed the impugned order of cancellation.

At the outset, it is to be noted that the impugned order of cancellation was passed by the 2nd respondent in exercise of the powers conferred under Section 5 (1) of the Act 16 of 1993. Section 5 of the Act 16 of 1993 which provides for cancellation of the false community certificates runs as under :

> *"**5. Cancellation of the false Community Certificate :--***
> *(1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either suo motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate **after giving the person concerned an opportunity of making a representation** :*
> *Provided that ……*
> *(2) … .. .. …"*

A bare perusal of the above provision shows that before passing an order cancelling the community certificate, the person concerned shall be given an opportunity of making a representation.

Nothing has been placed this Court by the respondents to show that such an opportunity was given to the petitioner by the 2nd

respondent before passing the order of cancellation dated 5.12.2004.

May be that, the petitioner was served with Form-VI notice issued by the District Level Scrutiny Committee calling upon him to attend the enquiry and to furnish all the documentary evidence in support of his community claim. The said notice was only for the purpose of the enquiry by the District Level Scrutiny Committee as provided under Rule 9 of The Andhra Pradesh (SC, ST & BCs) Issue of Community Nativity and Date of Birth Certificates Rules, 1997 (for short, 'the Rules, 1997'), on the basis of which the District Level Scrutiny Committee furnished its findings to the District Collector. Thereupon, it is necessary for the District Collector to form an opinion that the Certificate was obtained fraudulently after giving the person concerned an opportunity of making a representation. Providing such an opportunity is mandatory before passing an order of cancellation under Section 5 (1) of the Act 16 of 1993.

In the case on hand, admittedly, no such opportunity was given, but the 2nd respondent had merely adopted the findings recorded by the District Level Scrutiny Committee and passed the order of cancellation without independently forming an opinion as required under Section 5 (1) of the Act 16 of 1993.

Hence, as rightly contended by the learned Counsel for the petitioner, the impugned order is not in conformity with Section 5 (1) of the Act 16 of 1993 and on that ground alone the same is liable to be set aside. That apart, the record placed before this Court discloses that the report of the Revenue Divisional Officer dated 22-7-2003 and the report of the District Level Scrutiny Committee, Chittoor dated 2-12-2004, on the basis of which the impugned order was passed were not furnished to the petitioner. Non-furnishing of the said reports while cancelling the community certificate would undoubtedly amount to violation of the fundamental principles of natural justice. In spite of the specific ground raised in the Appeal as to the non-furnishing of the relevant documents, the 1st respondent – Appellate Authority – failed

to consider and confirmed the order of cancellation mechanically.

In the circumstances, I am of the opinion that it is not necessary for this Court to go into the various other grounds raised by the petitioner on merits since apparently the order of cancellation which is not in conformity with the mandatory provisions of the Section 5 (1) of the Act 16 of 1993 as well as the fundamental principles of natural justice is unsustainable and liable to be set aside on that ground alone.

Accordingly, the order of the 2nd respondent dated 5-12-2004 as well as the order of the 1st respondent - Appellate Authority - dated 8-10-2005 are hereby set aside and the Writ Petition is allowed leaving it open to the 2nd respondent to pass appropriate orders afresh after furnishing all the relevant documents, particularly the report of the Revenue Divisional Officer, Chittoor, dated 22-7-2003 and the report of the District Level Scrutiny Committee, Chittoor, dated 2-12-2004, and after giving an opportunity to the petitioner to make his representation in terms of Section 5 (1) of the Act 16 of 1993. No costs.

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G. ROHINI, J.

Dt. 13–10-2006
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